

806 KAR 12:020. Fair disclosure to consumers.

RELATES TO: KRS 304.9-440, 304.12-010, 304.12-020, 304.12-040, 304.12-110, 304.12-130, 304.14-120 to 304.14-180

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Executive Director of Insurance shall make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation further interprets and implements statutory standards to assure fair disclosure to consumers.

Section 1. Deeming it to be in the highest degree of public interest that the insurance buying public will not be deceived or misled in regard to the purchase of life insurance, it is therefore considered proper and desirable to further implement and interpret the statutory standards which generally relate to the sale of life insurance.

Section 2. Applicability. This administrative regulation shall apply:

- (1) To any insurance company, person, broker, or consultant, as those terms are defined in the insurance code.
- (2) To acts and practices in the advertising, promotion, solicitation, negotiation of or effecting the sale of life insurance policies (this administrative regulation shall not apply to group insurance policies or to annuity contracts).
- (3) To such acts and practices whether they involve the use of language disseminated by means of sales kits, policy jackets or covers, letters, personal presentation, visual aids or other sales media.

Section 3. Statement of Policy. (1) The purpose of this administrative regulation, essentially, is to assure fair disclosure of relevant facts in the sale of life insurance. This administrative regulation is also designed to protect purchasers and prospective purchasers of life insurance policies against the use of sales methods which are misleading because of:

- (a) The omission of facts fairly describing both the subject matter of a life insurance policy and the benefits obtainable thereunder.
- (b) An undue emphasis upon facts which, however, true, are not relevant to the sales of life insurance.
- (c) An undue emphasis upon features which are of incidental or secondary importance to the life insurance aspects of a policy.

(2) To assure such fair disclosure and to prevent the use of misleading sales methods this administrative regulation provides advance interpretations as to specific acts and practices which the Office of Insurance believes constitute violations of said statutes; provided, however, it is recognized that whether particular conduct comes within the prohibition of said statutory provisions depends upon the facts in each case.

(3) Although this administrative regulation is addressed to selected acts and practices which have been of serious concern to the Office of Insurance, this delimitation is not a determination that any act of practice not specified herein is in conformance with the aforesaid statutory provisions. However, this administrative regulation will be read as a guide in considering whether any unspecified act or practice is of the kind or character which may be within the prohibitions of said statutory provisions.

(4) In accordance with the purposes and limitations set out in Sections 1 and 2 of this administrative regulation, the acts and practices set out in the following sections are declared to be unlawful when used in context or done under such circumstances or conditions as to have the capacity and tendency to mislead a purchaser or prospective purchaser to believe that he will receive, or that it is

probable he will receive something other than an insurance policy, some benefit not available to other persons of the same class and equal expectation of life. Each of said sections will, therefore, be construed and applied in concordance with the provisions of this section.

Section 4. Policy Forms. From the effective date of this administrative regulation no company shall:

(1) Include coupons as a part of policies containing pure endowment benefits. A pure endowment benefit is a guaranteed insurance benefit, actuarially determined, the payment of which is contingent upon the survival of the insured to a specified point in time.

(2) Issue a policy of insurance containing pure endowment benefits unless the gross premium for these provisions is shown prominently and separately in the policy as distinct from the regular insurance gross premium. This subsection shall not apply to any policy in which the amount of any pure endowment or periodic benefit or benefits payable during any policy year is greater than the total annual premium for such year.

(a) This separate gross premium for the series of pure endowments shall be based on reasonable assumptions and be consistent with the basic policy form as to interest, mortality and expense.

(b) The amount of the guaranteed series of pure endowment benefits shall be expressed in dollar amounts and shall not be presented or defined, either in the policy or any sales and advertising material, as a "percentage" of any premiums or benefits contained therein.

(c) All policies with pure endowments sold in Kentucky after the 60th day following the date of this order shall bear the following statement, or similar wording approved by the office set forth, rubber-stamped on the face of the policy until present stocks are exhausted: The premium includes \$_____ for pure endowment benefits.

(3) Use a dividend illustration in connection with a participating life insurance policy unless such dividend illustration is on file with the Executive Director of Insurance as a part of a rate book or as a separate filing.

(4) Use such words as "investment or investment plan," "insured investment plan," "profit-sharing," "charter plan," "founders plan," or similar language in a life insurance policy, either in context or under such circumstances or conditions as to have the capacity and tendency to mislead a purchaser or prospective purchaser to believe that he will receive or that it is probable he will receive something other than an insurance policy, some benefit not provided in the policy, or some benefit not available to other persons of the same class and equal expectation of life.

Section 5. Sales Presentation and Solicitation. From the effective date of this administrative regulation it shall be deemed unlawful to make:

(1) Reference to a policy using similar terminology as described in Section 4(4) of this administrative regulation and more particularly:

(a) Statements or representations that the prospective policyholder will receive the right to benefits from the insurance company which are not stipulated in the policy itself; or

(b) Statements or references that refer to premium payments in language stating the payment is a "deposit" unless:

1. The payment establishes a debtor-creditor relationship between the insurance company and the policyholder; or

2. The term is used in conjunction with the word "premium" in such a manner as to indicate clearly the true character of the payment.

(c) Statements which describe a life insurance policy or premium payments in terms of "unit of participation" unless accompanied by other language fairly indicating their reference to a life insurance policy or to premium payments, as the case may be. Statements which describe a life insurance policy or premium payments in terms of units henceforth shall be followed by the dollar amount

representing the annual premium for each unit or units described; and further wording clearly indicating that the unit or units represent a life insurance policy.

(d) Statements which infer that the guaranteed endowments available under a policy are interest, earnings, return on investment, or anything other than benefits for which the cost is taken into consideration in calculating the total premium.

(2) Reference to any policy or contract in such a manner as to misrepresent its true nature and more particularly:

(a) Statements which tend to lead the prospect to believe that the agent is dealing in other than a life insurance contract.

(b) Statements which tend to lead the prospect to believe that life insurance is incidental to the purchase of the contract.

(c) Statements or reference relating to the growth of the life insurance industry or to the tax status of life insurance companies in a context which would reasonably be understood to interest a prospect in the purchase of shares of stock in an insurance company rather than in the purchase of a life insurance policy.

(d) Statements which reasonably give rise to the inference that the insured will enjoy a status common to a stockholder or will acquire a stock ownership interest in the insurance company by virtue of purchasing the policy.

(e) References or statements to a company's "investment department," "insured investment department," or similar terminology in such a manner as to imply that the policy was sold, or issued, or is serviced by the investment department of the insurance company.

(3) References regarding the payment of dividends in such a manner as to misrepresent their true nature, and more particularly:

(a) Providing any illustration as to projected dividends unless the dividend scale is based on the experience currently used by the company for dividends, and unless the illustration is expressed in dollar amounts.

(b) Statements which use the words "dividends," "cash dividends," "surplus," or similar phrases in such a manner as to state or imply that the payment of dividends is guaranteed or certain to occur.

(c) Statements or references that a purchaser of a policy will share in a stated percentage or portion of the earnings of the company.

(d) Statements which use the word "dividend," "cash dividends," "surplus," or similar terminology shall be expressed only in dollar amounts. This shall apply to projected dividends as well as past experience on dividends.

(e) Statements or inferences that projected dividends under a participating policy will be or can be sufficient at any time to assure the receipt of benefits, such as a paid-up policy, without the further payment of premiums unless the statement is accompanied by an adequate explanation as to:

1. What benefits or coverage would be provided at such time.
2. The conditions under which this would occur.

(4) Reference to any policy or contract in such a manner as to suggest that certain policyholders will receive preferential treatment, and more particularly:

(a) Statements or references which would reasonably tend to imply that by purchasing a policy, the purchaser or prospective purchaser will become a member of a limited group of persons who may receive in the payment of dividends, special advantages, benefits, or favored treatment. This paragraph has no relation or applicability to policies under which insured persons of one (1) class of risk may receive dividends of a higher rate than persons of another class of risk.

(b) Statements or references that each policyholder is given the right to allocate a specific number of policies.

(c) Statements or inferences that only a limited number of person or a limited class of persons, will be eligible to buy a particular kind of policy, unless such limitation is related to recognized un-

derwriting practices.

(d) Statements or inferences that policyholders who act as "centers of influence" for an insurance company in that capacity will share in the company's surplus earnings in some manner not available to policyholders of the same class.

(e) Comparisons to the past experience of other life insurance companies where the comparison is based on an arbitrary selection as to either the companies or the statistics or other data which are used. This paragraph is intended to protect policyholders from being misled as to the character of a policy or its benefits, through the presentation of experience of companies with reverse experience.

Section 6. Dividends. (1) Policyholder premium or gross cost reductions on participating policies will be designated dividends. No other items shall be designated as dividends. Dividends shall not be guaranteed as to amount, percentage or premium, or other basis. The decision for declaration of a dividend shall be determined by the insurance company's board of directors, based solely on operating results or projection for those policies designated "participating" policies.

(2) When dividends are "declared" for a policy year classification (based on specific plan and/or age classifications as they relate to contribution of company ability to declare dividends), dividends will be apportioned to all policies so entitled in that policy year.

(3) The date dividends are declared shall be the date liability is established for the dividends and the reserve established for this liability will be the full amount of the dividends declared.

Section 7. Other Provisions. (1) In order to implement this administrative regulation the office will exercise its right at its discretion to require the submission of any or all sales material.

(2) Each company will be held responsible for disseminating this administrative regulation to its representatives and assuring compliance.

(3) The provisions of this administrative regulation are intended to apply only to policies issued on or after its effective date for delivery in this state, and it does not apply to contracts issued prior to the effective date nor to contracts issued prior to the effective date nor to contracts issued for delivery outside the state. The adoption of this administrative regulation should not disturb or cast doubt about the validity of previously issued contracts described herein.

(4) No insurance company, insurance agent, consultant, nor insurance company representative shall as a competitive or "twisting" device, inform any policyholder or prospective policyholder that any insurance company was required to change a policy form or related material to comply with the provisions of this administrative regulation.

(5) The executive director may suspend or revoke any license or authority for violation of the provisions of this administrative regulation after a hearing upon written notice as required by the insurance code. (I-12.01; 1 Ky.R. 1077; eff. 7-2-75; TAm eff. 8-9-2007.)